

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
AT NASHVILLE**

KAYLA GORE; JAIME COMBS; L.G.; )  
and K.N., )

*Plaintiffs,* )

v. )

No. 3:19-cv-00328

WILLIAM BYRON LEE, in his official )  
capacity as Governor of the State of )  
Tennessee; and LISA PIERCEY, in her )  
official capacity as Commissioner of the )  
Tennessee Department of Health, )

Judge Eli J. Richardson  
Magistrate Judge Barbara D. Holmes

*Defendants.* )

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**DEFENDANTS' STATEMENT OF ADDITIONAL FACTS**

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Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure and Rule 56.01 of the Local Rules of Court, Defendants provide the following Statement of Additional Facts which are material undisputed facts supporting Defendants' position and/or material facts which present genuine issues for trial.

| No. | Fact  | Supporting Record Citation   |
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| 1.  | Gender identity cannot be determined at birth, but rather is a person's "inner sense of belonging to a particular sex" and becomes "detectable by self-disclosure in adolescents and adults." | Expert Decl. Dr. Randi C. Ettner, Ph.D., Doc. 61-1, ¶ 19.  |
|     | Response:   |  |
| 2.  | A baby's sex is a part of the medical record that will always accurately reflect what happened during the birth procedure.  | Decl. Anthony E.D. Trabue, M.D., Ex.1 ¶ 25, attached as Ex. 4 to Defs' Not. Filing Materials Supp. Resp. Pls.' Mot. Summ. J. |

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|    | Response:  |   |
| 3. | Dr. Ettner opines that gender is “immutable.”  | Ettner Decl. ¶ 25.  |
|    | Response:  |   |
| 4. | Dr. Shane Taylor opines that gender is biologically based and cannot be changed.   | Expert Decl. Dr. Shane Sebold Taylor, Doc. 61-2, ¶ 21.  |
|    | Response:  |   |
| 5. | <p>Dr. Ettner testified in her deposition as follows:</p> <p>Q. Have you ever evaluated someone who is transgender whose gender identity later reverts back to their birth sex?</p> <p>MS. INGELHART: Objection to the term at issue, birth sex, as well as these others that we have discussed. But answer to the best of your ability.</p> <p>BY THE WITNESS:</p> <p>A. I have evaluated I think on two occasions people who have attempted to reverse their surgery or have regretted having the surgery, and one I think attempted to revert to living in their birth sex but they didn't -- they did not state that their gender identity had changed, just that they needed to live as a man for a variety of other reasons.</p> <p>Q. All right. Are you aware, just in the profession, of transgender folks who have -- whose gender identity has reverted to their birth sex?</p> <p>A. I am aware of people who have detransitioned.</p> <p>Q. Is that the terminology, detransitioned?</p> <p>A. Detransition means they have reverted to living in the sex they were assigned to. It doesn't necessarily mean that their gender identity</p> | <p>Dep. Randi C. Ettner at 116-118, excerpts attached as Ex. 3 to Defs' Not. Filing Materials Supp. Resp. Pls.' Mot. Summ. J.</p> |

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|     | <p>has changed, and I wouldn't know without actually interviewing or assessing those people.</p> <p>[ ]</p> <p>A. I'm aware that some people who have transitioned from the sex they were assigned at birth have reverted to living in the gender, the sex they were assigned at birth. I cannot state that their gender identity has changed, only that the circumstances under which they live have changed.</p> |  |
|     | Response:  |  |
| 6.  | Plaintiff Jaime Combs testified that she did not believe she had used her birth certificate as a form of identification in the past seven (7) years  | Dep. Jaime Combs at 40-41, excerpts attached as Ex. 2 to Defs' Not. Filing Materials Supp. Resp. Pls.' Mot. Summ. J. |
|     | Response:  |  |
| 7.  | In her deposition, Plaintiff Combs could only refer to a situation, remote in time, in which she was required to present her birth certificate.  | Combs Dep. at 42-43.   |
|     | Response:  |  |
| 8.  | L.G. testified that she keeps her birth certificate locked in a safety deposit box, and could only respond concerning her fears associated with actually presenting her birth certificate.   | Dep. L.G. at 45, excerpts attached as Ex. 1 to Defs' Not. Filing Materials Supp. Resp. Pls.' Mot. Summ. J.           |
|     | Response:  |  |
| 9.  | The Tennessee Vital Statistics Birth Data Element Layout used by the Tennessee Department of Health to record information contains over 416 data elements.   | Decl. Edward Gray Bishop ¶ a, attached as Ex. 6 to Defs' Not. Filing Materials Supp. Resp. Pls.' Mot. Summ. J.       |
|     | Response:  |  |
| 10. | The information recorded is extensive and ranges from the date of birth to the parents' educational level to the congenital anomalies of the infant.   | Bishop Decl. ¶ a.  |
|     | Response:  |  |
| 11. | The information contained in the Tennessee Vital Statistics Birth Data Element Layout forms the basis of the historical birth record of the child, as well as the  | Bishop Decl. ¶ b.  |

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|     | Tennessee Department of Health Certificate of Live Birth.   |  |
|     | Response:   |  |
| 12. | Tennessee birth certificates merely record the sex of the child as reported at birth.   | Bishop Decl. ¶ c.  |
|     | Response:   |  |
| 13. | Following NCHS guidance, the Tennessee Birth Statistical System is limited to three valid values for the sex of the infant: Male, Female, and, if the sex of the infant is ambiguous, Not Yet Determined or Unknown.  | Decl. Vanessa Lefler ¶ 2, attached as Ex. 5 to Defs' Not. Filing Materials Supp. Resp. Pls.' Mot. Summ. J. |
|     | Response:   |  |
| 14. | Plaintiffs' expert Dr. Ettner testified as follows:<br><br>Q. How many categories of gender identity are there?<br>A. There are many ways that people can express their gender identity.  | Ettner Dep. at 25.   |
|     | Response:   |  |
| 15. | Dr. Ettner testified as follows:<br><br>Q. In your experience of having treated over 3,000 individuals, have you experienced individuals who call themselves, for example, agender?<br><br>A. It's not a term that is commonly used, although there are terms that are similar that are used and that I have, indeed, seen in my clinical practice.<br><br>Q. What similar terms?<br><br>A. Non-binary, genderqueer would be examples of the – what I believe is the example you are offering?<br><br>Q. And those terms, what do they denote?<br><br>A. Individuals who characterize themselves in that manner don't necessarily have a gender identity that they believe is entirely male or entirely female. And they see themselves as having a more nuanced or unique identity which they oftentimes attempt to express. | Ettner Dep. at 27.   |
|     | Response:   |  |

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| 16. | <p>Recording sex at the time of birth is necessary for several reasons, including the following:</p> <ul style="list-style-type: none"> <li>• Use as a direct indicator in maternal and child health outcomes in public health surveillance and research. Fetal or infant sex is found in research to be a risk factor for the incidence of other information collected on the Certificate of Live Birth, including gestational diabetes, preterm birth, infant birth weight, and cesarean delivery.</li> <li>• Analysis for logical consistency with other items collected on the Certificate of Live Birth, particularly the congenital anomaly, hypospadias, which is defined as the “incomplete closure of the male urethra resulting in the urethral meatus opening on the ventral surface of the penis.”</li> <li>• Inclusion in set of personal identifiers used in records matching programs from administrative or auditing functions. The linkage of birth certificate records to TennCare (Medicaid) or Newborn Screening data, which receive information from medical records that were generated at the time of birth, are examples of this work. Sex is routinely included as a data element in records matching programs in order to establish more confident matches in the absence of reliable unique identifiers, such as a Social Security Number or Medical Record Number.</li> </ul> | Lefler Decl. ¶ 1. |
|     | Response:   |                   |
| 17. | Amendments of minor errors on birth certificates during the first year are permitted in accordance with Tenn. Comp. R. & Regs. 1200-07-01-.10(1).   | Bishop Decl. ¶ d. |
|     | Response:   |                   |
| 18. | Creating additional ways in which Tennessee’s birth records can be modified, particularly without a statutory scheme in place to regulate and track such modifications, heightens the potential for fraud and illegality.   | Bishop Decl. ¶ e. |
|     | Response:   |                   |

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| 19. | Plaintiff Jaime Combs admitted that, when she was required to present her birth certificate to her bank in 2010, it was before she had her passport corrected. | Combs Dep. at 44. |
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Respectfully Submitted,

HERBERT H. SLATERY III  
Attorney General and Reporter

/s/ Dianna Baker Shew  
DIANNA BAKER SHEW BPR 012793  
Senior Assistant Attorney General  
(615) 532-1969  
dianna.shew@ag.tn.gov

SARA E. SEDGWICK BPR 004336  
Senior Assistant Attorney General  
(615) 532-2589  
sara.sedgwick@ag.tn.gov  
P.O. Box 20207  
Nashville, TN 37202  
*Counsel for the Defendants*

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of May 2020 I filed the foregoing via the Court's ECF system and thereby served the following counsel:

Gavin R. Villareal  
Maddy Dwertman  
Puneet Kohli  
Samoneh Kadivar  
BAKER BOTTS L.L.P.  
98 San Jacinto Boulevard, Suite 1500  
Austin, TX 78701-4078  
Phone: (512) 322-2500  
Facsimile: (512) 322-2501  
gavin.villareal@bakerbotts.com  
maddy.dwertman@bakerbotts.com  
puneet.kohli@bakerbotts.com  
samoneh.kadivar@bakerbotts.com

Brandt Thomas Roessler  
BAKER BOTTS L.L.P.  
30 Rockefeller Plaza  
New York, NY 10112-4498  
Phone (212) 408-2500  
Facsimile: (212) 408-2501  
brandt.roessler@bakerbotts.com

Kathryn S. Christopherson  
BAKER BOTTS L.L.P.  
1001 Page Mill Rd., Bldg. One, Suite 200  
Palo Alto, CA 94304-1007  
Phone: (650) 739-7500  
Facsimile: (650) 739-7699  
kathryn.christopherson@bakerbotts.com

John T. Winemiller (TN 021084)  
MERCHANT & GOULD  
9717 Cogdill Road, Suite 101  
Knoxville, TN 37932  
Phone: (865) 380-5960  
Facsimile: (612) 332-9081  
JWinemiller@merchantgould.com

Sasha Buchert  
LAMBDA LEGAL DEFENSE AND EDUCATION  
FUND, INC.  
1776 K Street NW, Suite 722  
Washington, DC 20006  
Telephone: (202) 804-6245  
sbuchert@lambdalegal.org

Omar Gonzalez-Pagan  
LAMBDA LEGAL DEFENSE AND EDUCATION  
FUND, INC.  
120 Wall Street, 19th Floor  
New York, NY 10005-3919  
Telephone: (212) 809-8585  
Facsimile: (212) 809-0055  
ogonzalez-pagan@lambdalegal.org

Tara L. Borelli  
LAMBDA LEGAL DEFENSE AND EDUCATION  
FUND, INC.  
730 Peachtree Street NE, Suite 640  
Atlanta, GA 30318-1210  
Telephone: (404) 897-1880  
Facsimile: (404) 897-1884  
tborelli@lambdalegal.org

/s/ Dianna Baker Shew  
Dianna Baker Shew